

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Criteria Used for Allocation of the Department of Pesticide Regulation's
Mill Assessment Funds to Counties
DPR Regulation No. 05-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6391, 6393, 6394, and 6396, and repeal section 6395 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to the criteria used for allocation of DPR's mill assessment funds to county agricultural commissioners (CACs) for use in their pesticide use enforcement programs.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on May 30, 2005. Comments regarding this proposed action may also be transmitted via e-mail at <dpr05001@cdpr.ca.gov>, or by facsimile (FAX) transmission at (916) 324-1452.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small business. The proposed action would apply only to the allocation of DPR's mill assessment funds to CACs for use in their pesticide use enforcement programs.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR is mandated by state and federal law to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes extensive scientific product evaluation and registration, and statewide licensing and certification of commercial applicators, brokers, dealers, and advisers. The field enforcement of regulations governing pesticide use is carried out by the CACs under the supervision of DPR.

The funding for the local pesticide field enforcement activities comes from four sources—mill assessment, locally generated fees and penalties, county general fund (GF), and unclaimed gas tax. The allocation of funds needed to administer local pesticide programs is largely contingent upon the budget decisions of each individual county.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

Over the past two years, the availability of county GF has resulted in reductions in some pesticide use enforcement programs. The reduction of county GF has exposed serious flaws in how pesticide use enforcement is funded. The reliance on county GF for approximately one-third of the pesticide use enforcement program poses a serious problem in and of itself, but there is also a more fundamental structural problem that exists. The disbursement of the mill assessment and unclaimed gas tax specifically depend upon the expenditure of county funds (i.e., county GF). Mill assessment and gas tax funds are disbursed to the counties in proportion to each county's expenditures. The unavailability of county GF can result in an erosion of pesticide use enforcement funding. The state is left with little ability to influence the outcomes of the local pesticide enforcement programs. The net result is that the state has no control over the pesticide use enforcement resources available in any particular county. This creates a situation in which the areas of the state that may need the greater enforcement resources sometimes fail to receive them, while other areas may receive more than the average. The pesticide regulatory program funding is thereby disjointed and disconnected from DPR and the county prioritization process, resulting in a lack of uniformity and stability in program delivery and confusion within the regulated community. DPR believes that the availability of county GF should not dictate the distribution of resources for pesticide use enforcement.

Under statute and regulation, DPR distributes mill assessment to the counties as partial reimbursement for their cost of carrying out the pesticide enforcement program. Mill assessment is a fee levied on the sale of pesticides sold in California. All pesticides offered for sale or use in California must first be registered by DPR. Persons who sell DPR-registered pesticide products in California are assessed a mill (\$0.001) fee based on dollar sales of the products sold within or into the state. DPR receives 71 percent of its funding from this mill assessment. The amount subvented to the counties equals the revenue derived from 7.6 mills of the total mill assessment revenue collected by DPR.

DPR proposes to amend sections 6391, 6393, 6394, and 6396, and repeal section 6395. Proposed section 6393 would replace existing disbursement criteria with new criteria that simplifies and prioritizes the order for the allocation of the total mill assessment funds available for disbursement. This creates a new funding baseline for counties built on historical workload, pest control activities, costs, and performance, and provides a means to distribute funds based on county needs as they are related to pesticide sales and use.

Currently, DPR staff evaluate each county's pesticide use enforcement program annually using the essential program element guidelines recognized by the Director. DPR proposes to amend section 6394 to specify that the evaluations will be prepared regularly instead of annually, and that the evaluations shall be in accordance with state program areas recognized by DPR in statute or regulation, or agreed upon by the county and/or DPR. Additionally, proposed amendments state that if the performance evaluation report identifies the need for improvements in a CAC's pesticide use enforcement program, any corrective actions shall be jointly developed and documented by both DPR and the CAC. Proposed amendments would allow DPR to take measures to improve a CAC's program if an agreement on corrective actions cannot be reached. Currently, language states that a corrective measure may include a reduction, not exceeding 25 percent of the county's annual mill assessment allocation. DPR proposes to eliminate this 25 percent cap.

DPR proposes to repeal section 6395. This section mentions benchmark dates of June 30, 1979, and March 1, 1980, and is obsolete.

Editorial corrections are proposed in section 6396(a) to reference correct subsections, while proposed subsection (b) would specify the distribution of any residual funds resulting from application of corrective actions taken against a CAC pursuant to proposed section 6394. Also, an editorial correction is being made to proposed section 6391.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the proposed amendment of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the proposed amendment of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses.

AUTHORITY

This regulatory action is taken pursuant to authority vested by Food and Agricultural Code sections 11456, 12781, and 12844.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 2281 and 12844.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments only on any changes for 15 days after the modified text is made available.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR

relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation, requests for a public hearing, and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

In the event the contact person is unavailable, or for questions on the substance of the proposed regulatory action, particularly questions of a technical or historical nature, please contact:

George Farnsworth, Chief
Mill Assessment Branch
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-4159

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by GC section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and may be accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date